IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 25 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHAMADBHAI ALUMIYA MALEK

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:
1. First Appeal No. 25 of 1986
MR AKIL KURESHI for Petitioner No. 1
MR MD PANDYA for Respondent No. 1
DELETED for Respondent No. 2
NOTICE SERVED for Respondent No. 3
MR SV RAJU for Respondent No. 4

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 20/02/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. Heard Mr. Akil Kureshi, learned advocate for the appellant, Ms. Maya Desai for Mr.M.D.Pandya, learned advocate for respondent no.1 and Mr.S.V.Raju, learned advocate for respondent no.4. Respondent no.2 deleted. Respondent no.3 served.

2. This appeal under Section 110 (D) of the Motor Vehicles Act,1988 is directed against the judgement and award rendered in M.A.C.Petition No.286 of 1982 with other connected matter on 26.2.1984, by the claims Tribunal (Main) at Nadiad, District - Kheda, partly allowing the claim petition, awarding compensation of Rs.29,250/- with 6% interest from the date of the application till the realization of the amount, holding the claimant driver of S.T.Bus No.GRT 4483 contributory negligent to the extent of 50% in the occurrence of the accident.

3. Mr. Akil Kureshi, learned advocate for the appellant - original claimant has stated that as far as the compensation awarded by the claims Tribunal is concerned, he has nothing much to say and that his submissions are on the question of contributory negligence to the extent of 50% held against the claimant driver of S.T.Bus GRT 4483.

4. Since the impugned award has not been assailed on any other grounds except 50% contributory negligence of claimant driver of S.T.Bus GRT 483, we confine ourselves to the 50% contributory negligence on the part of the appellant claimant as held by the claims Tribunal.

5. It is not in dispute that on 2.4.1981, the appellant was in charge of S.T.Bus GRT 8843 as an employee of respondent no.1 - G.S.R.T.Corporation. It is also not in dispute that the appellant, driving the said bus, was going from Sarani to Mahudha and that the bus had just started from the S.T.Bus stand of Mahudha College and while negotiating the curve, collision between the said bus and Motor-truck No.GTY 4328 took place. In the said accident, driver and the passengers in the said S.T.Bus sustained injuries.

6. As far as the 50% contributory negligence of the appellant is concerned, it has been deposed by the claimant i.e. the driver of the said Bus that he had stopped the bus at Mahudha College Bus Stand and thereafter, he started the bus from there and traveled

upto the distance of 30 to 35 feet and at that time, one motor-truck came from opposite direction, driven at a excessive speed, he took his bus on the left hand side of the road and applied the break and the bus was at standstill. Still, however, the front right hand side portion of the bus dashed with the right hand side front portion of the motor-truck and when he started the bus from the bus stand, same was run in the first gear and seeing the motor-truck from the opposite direction he did not change the gear. The road was curving on the left hand side at the place of accident.

7. The Panchnama pertaining to the place of accident is at Exh.70. Perusal of the same suggests that motor-truck bearing No.GTY 4328 facing Dakor i.e. eastern direction was standing and S.T.Bus bearing No.GRT 4483 facing west i.e. towards Mahudha was standing. It is suggested that the right hand side front portion of both the vehicles got damaged in the collision and it was a head-on collision. It is also suggested from the Panchnama that width of the road at the place of accident was 12 feet north-south and on both sides of the road, there was a kaccha strip of 8 feet width. Panchnama further suggests that the front left wheel of the bus was at the distance of 6 feet from the southern edge of the road, whereas the rear left side wheel of the bus was at the distance of 3 feet from the sourthen edge of the road. It may be appreciated that the bus was going from east to west and, therefore, the correct side for the bus would be the sourthen half of the road. The motor-trcuk was coming from the opposite direction i.e. from west and going towards east and, therefore, correct side of the road for the motor-truck was the northern half of the road. Panchnama further suggests that the left hand side wheel of the truck was of the kaccha strip of the road and from that place, pakka road was at the distance of 4 feet towards south. Panchnama further suggests that the left hand side wheel of the motor-truck was on the kaccha strip of the road. Meaning thereby, that the motor-truck was taken on the kaccha strip of the road. Panchnama further suggests that the width of the S.T.Bus is 7 and 1/2 feet. Now taking the distance of 6 feet between the southern edge of the road and front left wheel of the bus and the width of the bus, it would mean that leaving 6 feet portion of the left hand side of the road the bus had almost occupied entire tar road which is recorded in the panchanama,Exh.70. Photograph, Exh.71, also suggests that the front right wheel of the bus having come near the northern edge of the tar road and the front portion of the truck, collided with the right front portion of the bus. Thus, panchnama,Exh.70 and photograph, Exh.71,

clearly suggest that the entire width of the road was occupied by the S.T.Bus in question. It need hardly be said that the appellant was driving the heavy public vehicle, carrying passengers in it and while negotiating a turn, he should have applied greater degree of care and caution in order to avoid accident, especially when he was negotiating the turn he could have taken his bus on the kaccha strip of the road on the left hand side i.e. on the sourthen side strip which is 8 feet wide and if the bus was in slow speed then, it would have required narrow turn to be taken while negotiating the turn because its a heavy vehicle. Instead the bus has left 6 feet portion of the tar road of its left hand side over and above kaccha strip of 8 feet. The panchanama indicates the rashness in driving the S.T.Bus by the appellant. Therefore, it cannot be said that simply because the bus started from the Bus stand and it had covered distance of 30 to 35 feet and as it was being run in first gear, the bus would not be in fast speed. It need hardly be said that the speed by itself would not be the criterion for judging the negligence / rashness but, it is the manner in which the vehicle is driven, would be decissive for coming to the conclusion whether the driver of the vehicle was rash and negligent or not. In the instant case, appreciating Panchanama, Exh.70 and Photograph, Exh.71, the appellant has rightly been held contributory negligent to the extent of 50% in the occurrence of the accident. Having regard to the evidence as above, we do not find any illegality committed by the claims Tribunal in holding the appellant driver contributory negligent to the extent of 50% in the occurrence of the accident and the finding of to the extent of contributory negligence arrived at by the claims Tribunal, in our opinion, does not call for any interference as the same is consistent with the evidence on record.

8. Since no other point is canvassed before us by the learned advocate for the appellant, confining ourselves to the ground of contributory negligence, we are of the view that the appeal being devoid of merits, is liable to be dismissed.

9. In the result, appeal fails with no order as to costs.

(N.G.Nandi,J.)

(D.A.Mehta,J.)

(vipul)